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Center for
Biological Diversity

October 14, 2003

Dr. Jerry Pell, Manager
Office of Electric Power Regulation
Fossil Energy, FE-27
U.S. Department of Energy
Washington, D.C. 20585

Sent via electronic mail to Jerry.Pell@hq.doe.gov

RE: Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line Draft
Environmental Impact Statement

Dear Dr. Pell:

The following comments on the draft Environmental Impact Statement (DEIS) for Tucson Electric Power's (TEP) proposed Sahuarita-Nogales transmission line are submitted on behalf of the Center for Biological Diversity, Defenders of Wildlife, and Arizona Wilderness Coalition (collectively "CBD"). The Center for Biological Diversity is a non-profit, public interest organization dedicated to the preservation, protection and restoration of biological diversity, native species and ecosystems of North America as well as the marine ecosystems and islands of the Pacific. CBD currently has over 7,500 members and works to achieve its goals through the use of science, policy, education and environmental law.

Defenders of Wildlife is a national non-profit, public-interest organization with over 430,000 members and supporters, over 5,000 of whom reside in Arizona. Defenders works to preserve the integrity and diversity of natural ecosystems, prevent the decline of native species, and restore threatened habitats and wildlife populations.

The Arizona Wilderness Coalition is working to protect Arizona's canyons, mesas, forests, and rivers. AWC coordinates and conducts inventories and educates citizens about the unique features of Arizona's landscape, while advocating and building support for their lasting protection. The AWC has completed inventories and has prepared preliminary wilderness recommendations for nearly one half of the state. AWC actively organizing volunteers to complete this effort for all of Arizona. AWC's long-term goal is to secure and protect major new

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wilderness units and Wild and Scenic River designations that will benefit all regions of the state and inspire visitors from all over the globe.

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CBD commends the authors of the DEIS for the effort expended in producing a well written and readable document. However, CBD also feels that the analysis provided in the DEIS contains fundamental flaws in relation to compliance with the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), the Roadless Rule, the Wild and Scenic Rivers Act and other laws. In light of these issues, CBD urges DOE to correct these errors and once again release a DEIS for comment, rather than producing a final EIS at this time.

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In general, we believe that the proposal at issue has enormous ramifications for both the United States and Mexico, ramifications that have not been adequately explained or presented to the public at large. While the U.S. and Canada have for many years had interconnected grid systems, the same cannot be said for the U.S. and Mexico. While recent energy developments in the Mexican state of Baja California Norte have increased the interdependence of our nations' means of energy production and distribution, these two systems remain largely independent.

The recent massive blackout in the Northeastern United States and Southeastern Canada underscores the extremely fragile nature of our grid system. This event also underscores the need for the utilities industry, the Department of Energy, the Department of Homeland Security and other governmental and private entities to immediately address the enormous challenges facing our existing infrastructure. Under our myopically deregulated system, in which responsibility for such events becomes frustratingly elusive, desperately needed improvements and maintenance of generation, distribution and transmission infrastructure has increasingly taken a backseat to rampant speculation and profiteering by unaccountable and often ephemeral corporations. Our nation's decisions regarding energy, once closely regulated and which by and large served the public interest, have gradually become dominated by self-interested, unaccountable corporations whose only allegiance is to bottom line profits and stock values.

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TEP's proposed Sahurita to Santa Ana, Sonora, Mexico transmission line (inaccurately described by the DEIS as the Sahuarita-Nogales transmission line) is a timely reflection of this trend towards serving corporate profits, rather than the public interest. As noted in the preface to the DEIS, fully 80% of the 500 MW to be transmitted by this line would be exported to the Mexican state of Sonora. This undertaking is completely without precedent along the U.S.-Mexico border. Clearly, TEP's primary motivation in proposing this project is not the provision of power to Nogales, Arizona and Santa Cruz County, but opening the extremely lucrative Mexican power market which traditionally has been off-limits to non-Mexican energy interests. Recognizing the potential public relations difficulties that would be faced in being forthright about these motivations, TEP in public pronouncements consistently claims that this line is designed to serve Santa Cruz county, and ameliorate the sometimes unreliable energy service in this area, while scarcely mentioning TEP's primary motivation—making billions off of the export (and eventual import) of energy to Mexico.

Comment No. 1

The Draft EIS was prepared in accordance with Section 102(2)(c) of NEPA, the Council of Environmental Quality (CEQ) regulations (40 *Code of Federal Regulations* [CFR] Parts 1500-1508), and all applicable laws, regulations, and agency policies. The Federal agencies have determined that the Draft EIS does not need to be re-issued for additional review. It is noted that the Final EIS contains revisions based on public comments and internal reviews.

Comment No. 2

While TEP's proposed project would be the highest capacity transmission interconnection between the U.S. and Mexico, if approved, the concept is not without precedent. Electricity trade between the United States and Mexico has existed since 1905. Presently, 16 electrical connections exist between the U.S. and Mexico that range in voltage from 115-kV to 230-kV. Three of the 230-kV connections between southern California and Baja California are synchronous interconnections that actually connect the U.S. and Mexican electrical grids. Over the past several years, DOE has received applications from NRG Energy, Inc., for a proposal for a 500-kV transmission link with Mexico, and from the Public Service Company of New Mexico (PNM) for a project similar to the TEP proposal. However, neither is currently active, and as discussed in Section 5.2.1, PNM recently indicated that it would be withdrawing its Presidential Permit Application.

As part of DOE's decisionmaking process on whether to grant a Presidential Permit for the proposed project, DOE will determine whether the proposed project would adversely impact the reliability of the U.S. electric system. Also, before authorizing exports to Mexico over the proposed 345-kV facilities, DOE must ensure that the export would not impair sufficiency of supply within the United States and would not impede, or tend to impede, the coordinated use of the regional transmission system.

Comment No. 3

TEP's proposal has a dual purpose. It is intended to address the problems with electric power reliability in Santa Cruz County, Arizona, and to cross the border to interconnect with the Mexican electrical grid. Potential economic benefit to TEP from the proposed project is outside the scope of the EIS.

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Nonetheless, the DEIS completely fails to address the precedent setting nature of this proposal or the fact that TEP plans to “unplug” much of northern Sonora’s grid and “plug” this system into our own grid. This major development, and the promise of future interconnections between the U.S. and Mexico grid, is a fundamental shift in energy policy that demands a full programmatic EIS before this proposal is even considered. To stress, the opening of energy trade between the U.S. and Mexico is significant event that under NEPA must itself undergo a full programmatic analysis, so that elected representatives, policy makers, other agency officials and the public in both the U.S. and Mexico have the opportunity to fully engage in full and honest discourse regarding this extremely important issue and its implications for our communities, our environment, our economies and our safety.

Without such analysis, the TEP DEIS is merely a Trojan horse for effecting a radical shift in the level of energy interdependence between the United States and Mexico. The linking of these grids is not a decision to be made within an administrative process, and should not be driven by corporations such as TEP which are required by law to prioritize profit to the exclusion of myriad other social values and considerations.

In addition to these general comments, please also address the following specific concerns:

I. THE DEIS’S PURPOSE AND NEED STATEMENT IS FUNDAMENTALLY FLAWED

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Under the Council on Environmental Quality’s implementing regulations for the National Environmental Policy Act, federal agencies proposing actions shall “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. While federal agencies are afforded deference with respect to a reasonable statement of the purpose and need for a particular project, “it is unreasonable for an agency ‘to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered.’” Vermont Public Interest Research Group v. United States Fish & Wildlife Service, 247 F. Supp. 2d 495, 526 (Dist. Vt. 2002), citing City of New York v. Dep’t of Transportation, 715 F.2d 732, 743 (2nd Cir. 1983).

In its consideration of a project’s purpose and need, federal agencies are further required to consider the direction given to the agency under relevant statutes, regulations or other direction, such as the ACC Order which precipitated the proposal of TEP’s powerline. See Citizens Against Burlington v. Busey, 938 F.2d 190, 196 (D. D.C. 1991). Thus, the requirement that an agency define a purpose and need statement is not determined in a vacuum, but must be considered in relation to the statutory, regulatory and other duties and responsibilities of the agency.

Importantly, the determination of the appropriate scope of the purpose and need for a proposed project—and the determination of alternatives which flows from that determination—is the province of the federal action agency (or agencies) not the private party applicant. In other words, NEPA’s mandate is not met by looking to what is most convenient, cost-effective, profitable or preferred by the private party, but by determining the project’s purpose in relation to

Comment No. 4

Electricity trade between the United States and Mexico has existed since 1905. In 1935, the *Federal Power Act* was amended to require approval by the Executive Branch before electricity could be exported to a foreign country. In 1939, President Roosevelt issued Executive Order 8202 requiring Presidential approval for the construction of transmission lines across the U.S. international border. The *North American Free Trade Agreement* (NAFTA), passed in 1993, states that “... it is desirable to strengthen the important role that trade in energy... play[s] in the North American region and to enhance this role through sustained and gradual liberalization” (Public Law 103-192, Article 601.2). Prior to NAFTA’s passage, the Office of the U.S. Trade Representative coordinated the preparation of *The NAFTA: Report on Environmental Issues* (USTR 1993) on the likely significance of the NAFTA and associated agreements on environmental and conservation issues. Applications for Presidential Permits are initiated by private entities based on private business decisions. It would be speculative for the Federal agencies to conceive of future private enterprise proposals for Presidential Permits and to combine them into a programmatic EIS for analysis. Each Federal agency evaluates proposals on a case-by-case basis in light of its own missions. In summary, Federal agencies have not created any new programs that would require the development of a programmatic EIS evaluation.

Comment No. 5

In permit proceedings such as TEP’s, where an applicant seeks permission for a specific proposed project to meet the applicant’s specific purpose and need, the Federal agencies generally limit their review to alternatives similar to the one proposed, i.e., that is, alternatives that would meet the applicant’s purpose and need. The agencies generally do not review alternatives that are not within the scope of the applicant’s proposals. Similarly, the Federal agencies do not compel a permit applicant to alter its proposal or its purpose and need, but instead they decide whether a permit is appropriate for the specific proposal as the applicant envisioned it. It is not for the agencies to run the applicant’s business or to compel an applicant to change its proposal: DOE evaluates the project as offered. Therefore, in an applicant-initiated process, the range of reasonable alternatives analyzed in detail is limited to those alternatives that would satisfy the applicant’s purpose and need and that the applicant would be willing and able to implement, plus the no-action

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the agency or agencies involved, and the statutory, regulatory and other guidance which directs that agency's actions. As stated by one court, "the evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals." *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986)(emphasis added).

In contravention of this mandate, the purpose and need section at pages 1-7 through 1-10 of the DEIS is clearly bounded by, and reliant upon, the preferred outcome of the project proponent, Tucson Electric Power. In fact, the first purpose and need statement provided is not that of the lead federal agency, Department of Energy, or of the other cooperating agencies, but of TEP. As made clear by NEPA, its implementing regulations, and judicial interpretations of those provisions, the purpose and need statement is to be defined by the federal agencies, not the private applicant.

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While TEP's statement attempts to portray the intent of the line as meeting the mandate of ACC Decision No. 62011 and providing reliable electricity service to Santa Cruz County, it is readily apparent that the overriding and primary purpose of the proposed powerline is the opening of lucrative Mexican power markets to TEP and other U.S. based corporations. This is evident simply by the fact that 80% of the energy which would be carried by this line would be exported to Mexico. Nonetheless, TEP attempts to portray this as a secondary goal, stating "TEP anticipates using the remaining 400 MW [of 500 MW] of capability for transport of energy between the United States and Mexico" (emphasis added).

By allowing TEP to define the terms of the DEIS's purpose and need statement, the Department of Energy and other cooperating federal agencies are impermissibly narrowing the scope of the NEPA analysis. In particular, the defined purpose of a proposed action may greatly affect the feasibility of alternatives. ("The stated goal of a project necessarily dictates the range of 'reasonable' alternatives and an agency cannot define its objectives in unreasonably narrow terms." *Carmel-by-the-Sea v. United States DOT*, 123 F.3d 1142, 1155 (9th Cir. 1997)). ("If the purpose is defined too narrowly, "only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). CBD strongly feels that the proper purpose and need for this project is to meet the mandate of ACC Decision No. 62011, which simply mandates that a backup transmission line be constructed to serve Nogales and Santa Cruz County. The desire of TEP to complete a binational line is only a peripheral consideration, and cannot be allowed to drive this NEPA analysis. The issue of this overly narrow purpose and need statement affecting the range of alternatives is discussed in detail below.

II. THE DEIS FAILS TO ANALYZE A REASONABLE RANGE OF ALTERNATIVES, AS REQUIRED BY NEPA

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NEPA requires that an EIS contain a discussion of the "alternatives to the proposed action." 42 U.S.C. §§ 4332(C)(iii),(E). The discussion of alternatives is at "the heart" of the NEPA

Comment No. 5 (continued)

alternative. All of the alternatives analyzed in this EIS were either suggested by or similar to alternatives suggested by TEP.

This approach is particularly apt where, as here, the proposed action reflects a state's decision as to the kind and location of electrical infrastructure it wants provided within its boundaries. The ACC is vested with the authority to decide how it believes energy should be furnished within Arizona's borders, including the need for, the location of, and the effectiveness of transmission lines within its borders. See the discussion at Section 1.1.2 and 1.2.2 of the EIS with respect to the respective jurisdictions and authorities of the state and Federal agencies, and their relationship to this NEPA review. TEP's proposal has the dual purpose of addressing problems of electrical reliability in Santa Cruz County, Arizona, and crossing the border to eventually interconnect with the Mexican electrical grid. Alternatives that would not satisfy both elements of this dual purpose are not reasonable alternatives for the Federal agencies to consider in detail.

Thus, during the course of this NEPA review, the Federal agencies have considered alternative routes for TEP's proposed transmission line, but have not deemed feasible proposed alternatives that contemplate construction of power plants or transmission lines that differ in capacity from those that the ACC has directed TEP to construct.

Comment No. 6

Section 2.1.5, which has been revised, explains why the alternatives suggested by the commentor were considered but eliminated from detailed analysis. Additionally, the response to comment 5 above explains the purpose and need and the range of alternatives analyzed in the EIS. The Federal agencies have determined that the Draft EIS does not need to be re-issued for additional review.

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process, and is intended to provide a "clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. 1502.14; Idaho Sporting Congress, 222 F.3d 562, 567 (9th Cir. 2000)(compliance with NEPA's procedures "is not an end in itself. . . [but] it is through NEPA's action forcing procedures that the sweeping policy goals announced in § 101 of NEPA are realized."). NEPA's regulations and Ninth Circuit caselaw require the agency to "[r]igorously explore and objectively evaluate all reasonable alternatives." Id. § 1502.14(a) (emphasis added); Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985) (EIS must consider "every" reasonable alternative). The courts, in the Ninth Circuit as elsewhere, have consistently held that an agency's failure to consider a reasonable alternative is fatal to an agency's NEPA analysis. See, e.g., Idaho Conservation League v. Mumma, 956 F.2d 1508, 1519-20 (9th Cir. 1992) ("The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate."); Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 48 Fed. Reg. 18,026 (March 16, 1981)("In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out the particular alternative. Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.")

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As noted above, the analysis of alternatives within a NEPA document is driven by, and inextricably linked to, the initial definition of the project's purpose and need. Because DOE has allowed the purpose and need statement to be impermissibly narrowed to conform to an analysis deemed acceptable by TEP, it has also impermissibly narrowed the full range of alternatives which must be considered in order to meet NEPA's mandate that such analysis consider a "reasonable" range of alternatives ("Logic and law dictate that every time an agency prepares an environmental impact statement, it must answer three questions in order. First, what is the purpose of the proposed project (major federal action)? Second, given that purpose, what are the reasonable alternatives to the project? And third, to what extent should the agency explore each particular reasonable alternative?" See City of Carmel-by-the-Sea v. United States Dep't of Transportation, 95 F.3d 892, 903 (9th Cir. 1996)).

Specifically, the DEIS fails to address at least two important categories of alternatives which would meet the true primary purpose of this powerline, which is meeting the ACC's mandate to construct a backup transmission line to provide reliable electrical service to Nogales and Santa Cruz County: 1) construction of a smaller line which could be routed within existing powerline corridors or along Interstate 19. Although residents in the area have strongly objected to a 345 kV line, a smaller line is much less obtrusive and may not raise the same objections among residents. In addition, a smaller line could possibly be buried near towns and other densely populated areas; or 2) a much shorter line linking from a locally generated power plant, which has long been under consideration in Santa Cruz County.

The fact that such alternatives were "considered but eliminated from further analysis" does not help DOE meet NEPA's mandate to analyze a reasonable range of alternatives. In fact, the reasons given for eliminating such alternatives again demonstrates that DOE is illegally allowing

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TEP to drive the NEPA process. For example, at page 2-8, the DEIS states that “on July 3, 2002, TEP wrote a letter to DOE requesting that the Eastern Corridor alternative, originally proposed by TEP and included in the Notice of Intent, be removed from further analysis in the EIS.” Similarly, an “I-19 corridor” alternative was eliminated from further analysis because of visual and other impacts through densely populated areas. Yet, these impacts would be largely mitigated if DOE did not in the first instance accept TEP’s demand that a 345 kV line must be constructed to export power to Mexico, thus precluding any consideration of smaller lines. CBD urges DOE to reissue the DEIS to consider smaller line proposals which would meet the purpose and need of providing reliable electrical service to Santa Cruz County, as this would allow the consideration of a much broader array of alternatives with substantially reduced environmental, human health, cultural and other impacts.

As noted recently by one court, “if NEPA mandates anything, it mandates this: a federal agency cannot ram through a project before first weighing the pros and cons of the alternatives. In this case, the officials of the Army Corps of Engineers . . . never looked at an entire category of reasonable alternatives and thereby ruined its environmental impact statement.” Simmons v. United States Army Corps of Engineers, 120 F.3d 664, 670 (7th Cir. 1997). In this case, DOE is abiding by TEP’s wishes to “ram through” an enormous 345 kV powerline without considering the many alternatives which could meet the important purpose of providing reliable electricity service to the city of Nogales and Santa Cruz County. Especially in light of NEPA’s overriding purpose to “use the NEPA Process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment,” 40 C.F.R. § 1500.2 (e), this course of action is clearly deficient, and the DEIS must be reissued with an analysis of the full range of reasonable alternatives available to TEP and the federal agencies in completing this project.

III. THE FOREST SERVICE ROADS ANALYSIS FOR THIS PROPOSAL IS DEFICIENT

The U.S. Forest Service administers the largest road transportation network of any agency, governmental entity, or nation on Earth. More than 386,000 miles of classified roads are contained within national forest boundaries. Forest service lands also contain an additional 137,000 miles within their boundaries, including 54,600 miles of public roads, 22,400 miles of private roads, and 60,000 miles of unclassified, unauthorized roads. It total, a nearly inconceivable 523,000 miles of roads are harbored within the Forest Service “transportation” system.¹

In a direct acknowledgment of this untenable situation, the sheer impossibility of maintaining such a system, and the innumerable deleterious environmental impacts of roads, the

¹ Data compiled by Wildlands Center for Preventing Roads. POB 7516, Missoula, Montana. wildlandscpr@wildlandscpr.org

Comment No. 7

Forest Service policy regarding roads is beyond the scope of this environmental review. However, a Roads Analysis (URS 2003a) was completed for the project using the *USDA Forest Service Miscellaneous Report FS 643* as guidance. This study considered and analyzed environmental, economic, and associated impacts.

On a Forest-wide basis, the density of existing classified roads and new road construction is limited to one mile of road or less per square mile. Per the *Coronado National Forest Forest Level Roads Analysis Report* dated January 13, 2003 (USFS 2003a), the existing road density on the Coronado National Forest is approximately 0.8 miles per square mile based on the area of the National Forest Systems Land (1,717,857 acres and 2,187.25 miles of jurisdiction road in the inventory). None of the alternatives would change the existing road density because TEP would close 1.0 mi (1.6 km) of existing classified road for every 1.0 mi (1.6 km) of proposed road to be used in the operation or long-term maintenance. Any authorization issued to implement the proposed project on the Coronado National Forest would contain terms and conditions to ensure road barrier effectiveness and maintenance, as appropriate. Based on the measures described above for ensuring the effectiveness of road closures, the proposed project is consistent with Forest Plan standards and guidelines for road density.

The Federal agencies have revised Section 5.2 of the Final EIS based on the U.S. Border Patrol’s response (USBP 2004) to the Federal agencies’ request regarding illegal immigration and law enforcement activities in the proposed project vicinity. The residential and business developments cited by the commentor are included in Section 5.2 of the Draft EIS.

Based on the revisions to Section 5.2, as described above, the Federal agencies have revised Section 5.3, Cumulative Impact Analysis, in the Final EIS to more completely assess the cumulative impacts.

In addition, Table 5.4-1 has been added to the Final EIS to provide a summary comparison of the cumulative impacts by resource area and identify any differences in cumulative impacts for the Western, Central, and Crossover Corridors.

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Forest Service on January 12, 2001 published its final rule implementing the Forest Service Roads Strategy. The implementation of this strategy modified Forest Service regulations at 36 C.F.R. parts 212 and 261, as well as replacing Forest Service Manuals addressing Planning (Title 1900) and the Transportation System (Title 7700).

Unfortunately, the Bush administration has waged an undemocratic and underhanded assault on both the Roads Strategy and the Roadless Policy, both of which were finalized only after what was perhaps the most extensive effort ever undertaken by a federal agency to solicit public opinion and comment on a proposed rule. In contrast, the various subterfuges of these policies by the Bush administration have allowed the American public little to no opportunity for public comment or review. See 66 Fed. Reg. 8899, February 5, 2001 (delaying effective date of the roadless rule); Interim Directive 7710-2001-2 (delegating authority to the Chief to approve road construction or reconstruction in roadless areas); Interim Directive 2400-2001-1 (extending the deadline by which all decisions must be informed by a roads analysis). In cases where public comment has been allowed, such as "New Interim Directive No. 7710-2001-3," which essentially guts the Roadless policy, these comments are ostensibly invited and considered even though the Forest Service has made them effective upon issuance. And of course, the Bush administration has baldly directed the Department of Justice to abdicate its duties to defend itself in the industry litigation challenging the adequacy of public participation during the Roadless policy NEPA process, leaving the legal defense of this landmark effort to intervenor environmental organizations.

Under the Roads Strategy, a revised administrative policy to guide transportation planning, analysis, and road management on national forest lands, the agency is required to conduct roads analysis before implementing site-specific projects. The purpose of this analysis is to finally provide some semblance of sanity and balance to the forest service roads system, for economic, ecological, and simple planning purposes. For example, revised Forest Service Manual Chapter 7712.13 (c) states:

"When proposed road management activities (road construction, reconstruction, and decommissioning) would result in changes in access, such as changes in current use, traffic patterns, and road standards, or where there may be adverse effects on soil and water resources, ecological processes, or biological communities, those decisions must be informed by roads analysis."

The final EA for the Roads Strategy also clearly contemplates such analysis, stating that all project decisions, ecosystem assessments, or forest plan revisions published more than six months after the effective date of the rule (January 10, 2001) require a roads analysis process or appropriate documentation explaining why information from a higher-level roads analysis was not needed to inform the project-level decision (Final EA, p. 30).

The Roads Strategy not only provides procedural direction to conduct roads analysis, but establishes substantive standards with respect to road closure, particularly unclassified roads. In recognition of the vast excessiveness of the current forest service transportation network, and the

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large contribution that illegal, uninventoried, and wildcat roads contribute to this problem, the Roads Strategy implements new policy stating that the forest service will:

"not maintain unclassified roads except under emergency resource protection circumstances. Unclassified roads will be closed and made inaccessible where funding permits unless they are made part of the authorized forest road system as provided for in this policy." FSM 7703.2 (1).

The Strategy provides for additions to the road system "only where resource management objectives are clearly demonstrated and where long-term funding obligations have been carefully considered," 7703.1 (4); further, any decision to add roads to the system "must be informed by a roads analysis process," involving consideration of several environmental impacts, including ecological processes, introduction of exotic species, effects on threatened and endangered species, cultural uses or historical sites, fish and wildlife habitat, water quality, and visual quality. 7703.2 (3). 7703.2 (2) further states that "many unplanned, unauthorized, unclassified travelways exist within National Forest System lands and are high priority candidates for decommissioning."

Despite the Road's Strategy clear presumption in favor of decommissioning unclassified roads, and its detailed requirements for adding any road to the transportation system, the DEIS anticipates the construction or "reconstruction" of substantial amounts of road in conjunction with TEP's proposed powerline. For example, page 4-114 of the DEIS states that, "for the Western Corridor, an estimated 20 miles (32 km) of temporary new roads would be built by TEP for project construction" and that "an estimated 95 locations within the Western Corridor would require repair or improvement." While the DEIS indicates that TEP apparently contemplates closing some of these roads after construction, the extent of such closures is not specified.

The proposed road construction and reconstruction in relation to the proposed Sahuarita-Nogales powerline conflicts with the Roads Strategy presumption in favor of road decommissioning, as well as its stated goal and requirement to reduce the extent of mileage within the Forest Service transportation system. As noted in the DEIS, page 3-93, approximately 320 miles of classified roads already exist within the Tumacacori ecosystem management area. An additional 350 miles of unclassified, wildcat roads are also found in the EMA. Biologically and ecologically important areas such as the Tumacacori EMA with existing excessive levels of road densities are precisely the type of areas for which the Roads Strategy contemplates extensive road closures. The TEP proposal would achieve precisely the opposite result.

Additionally, the roads analysis informing this project does not meet substantive direction contained in the Roads Strategy in several respects. For example, the analysis does not adequately analyze the various environmental, economic and other impacts of both the existing road system within the Tumacacori EMA. Additionally, it does not meet or address the Strategy's presumption in favor on closing and decommissioning non-system roads, but instead contemplates the "reconstruction" and eventual addition of many of these roads into the classified roads system. Finally, the analysis clearly does not address the fact that under the Roads Strategy, additions to

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the roads systems may only be made where "resource management objectives are clearly demonstrated (in this case, the Forest Service concedes that the proposal is at odds with existing direction, and would require forest plan amendments) and there has been no consideration of long term funding objectives.

IV. THE PROPOSED ROAD CONSTRUCTION AND RECONSTRUCTION VIOLATES CORONADO FOREST PLAN DIRECTION

The Coronado National Forest completed a Land and Resource Management Plan (LRMP) for the lands it administers in 1986. The LRMP has subsequently been amended several times, most recently in 1996. The Forest Service is required by both the National Forest Management Act and its own implementing regulations to follow the directives contained in the LRMP. This requirement of project consistency with Forest Plan objectives, standards and guidelines has been affirmed by many cases in the 9th Circuit. See *Pacific Rivers Council v. Thomas*, 30 F.3d 1052 (9th Cir. 1994); *Idaho Conservation League v. Mumma*, 956 F.2d 1512 (9th Cir. 1992).

The road construction and reconstruction proposed within the DEIS violates objectives, standards and guidelines of the Coronado LRMP, thus violating NFMA. For example, the Coronado LRMP states the following with respect to roads:

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"Limit density of existing and new road construction to one mile of road or less per square mile."

(Coronado LRMP at p.34).

In addressing this issue, the DEIS states that "USFS has indicated that current road density is estimated to be near this level." This statement appears to be clearly and directly at odds with the fact, however, that there are over 650 miles of classified and unclassified roads within the Tumacacori EMA. In addressing levels of road density, it is both inappropriate and unlawful for the Forest Service to only address official system roads, especially when the proposal at hand will be "reconstructing" many unofficial, wildcat roads.

Moreover, the DEIS's proposed "one mile road closed, for one mile opened" or "no net increase" in roads fails to bring the Forest Service into conformance with its Forest Plan road density requirements. Conformance with this standard cannot be delayed until a later date, but must be ensured now, before the powerline EIS process is completed. While TEP and the Forest Service's intent to close "high priority" roads such as wildcat roads and roads crossing riparian areas is to be commended, it cannot be overlooked that the proposed powerline would require the construction or reconstruction of additional wildcat and riparian-crossing roads. Additionally, both funding constraints and the Forest Service's recent policy shift mandating full NEPA procedures for any road closures (even of non-system, illegal, wildcat roads) ensures that such promised road closures are far from certain.

Comment No. 8

The Tumacacori EMA of the Coronado National Forest in and of itself does not exceed road density limits set forth in the Forest Plan. Road density limits set forth in the Forest Plan are for the Coronado National Forest as a whole, not for individual land units or EMAs within the Coronado National Forest, and are calculated only for classified roads. The Draft EIS does not state that the proposed road closures would bring USFS into compliance with Forest Plan road density requirements.

None of the roads to be constructed or reconstructed as part of the proposed project would remain as unclassified ("wildcat") roads. All proposed roads to structure sites would become administratively closed special use roads, and roads to access these maintenance roads would be Level 2 roads (see Section 4.12.1, Transportation).

The commentor is correct in stating that some of the access roads to be constructed or reconstructed would cross through riparian areas. Section 4.3.2 (see USFS Classified Riparian subheadings) provides analysis of the disturbance to riparian areas on the Coronado National Forest from access roads and other disturbance associated with the proposed project.

Regarding the effectiveness of road closures, any authorization issued to implement the proposed project on the Coronado National Forest would contain terms and conditions to ensure road barrier effectiveness and maintenance, as appropriate. Based on these terms and conditions for ensuring the effectiveness of road closures, the proposed project is consistent with Forest Plan standards and guidelines for road density. See also the response to comment 7 above.

Comment No. 9

The analysis in the Final EIS correctly relies on the IRAs defined in Volume 2 of the *Forest Service Roadless Area Conservation Final Environmental Impact Statement* (USFS 2000) to determine potential impacts of the proposed project. The method used by the Coronado National Forest to identify the IRAs in the *Forest Service Roadless Area Conservation Final Environmental Impact Statement* is outside the scope of this EIS.

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The proposed road construction and reconstruction clearly violates Forest Plan road density standards, and thus fails to meet the mandate of NFMA. Road density standards within the Tumacacori EMA are currently well above Forest Plan thresholds, and this issue must be addressed now, before any additional road construction or reconstruction is permitted within the EMA. Additionally, the excessive road density levels within the EMA raise issues of compliance with a number of other Forest Plan standards and guidelines providing for protection of wildlife, soils, visual quality and other considerations.

V. TEP'S PROPOSED POWERLINE VIOLATES THE ROADLESS RULE

Throughout the DEIS, it is claimed that the proposed powerline and associated road construction and other development will not impact any inventoried roadless areas (IRAs). CBD believes this claim is patently false, and that the Forest Service has improperly redefined IRAs under its jurisdiction so as to effect an illegal gerrymandering that has resulted in the fragmentation of several IRAs into much smaller and disjointed units. Perhaps not coincidentally, TEP's proposed Sahuarita-Nogales powerline precisely crosses an area that is rightfully considered roadless under the most recent inventory efforts, as well as law and regulation, but which the Forest Service has attempted to define out of existence.

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In 1979 the Coronado National Forest completed a congressionally mandated inventory of potential Wilderness Areas, known as the second Roadless Area Review and Evaluation, or RARE II. As a result of the RARE II process, twenty-one areas on the Coronado National Forest were deemed "Roadless" and recommended for Wilderness designation, non-Wilderness uses, or a third classification called Further Planning which allowed upcoming Forest Plans to individually assess the Wilderness Characteristics of so designated areas.

The Tumacacori EMA contained three RARE II areas as defined by the Final Environmental Impact Statement of the Roadless Area Review and Evaluation II issued in January 1979. Unit # 03-114, named Tumacacori, comprised of 51,490 acres that encompassed the majority of the Tumacacori and Atascosa Mountains, including Apache Pass and Bartolo Mountain. Throughout the course of the NEPA process, 03-114 was moved from a recommendation of "Wilderness" to "Further Planning," and then was ultimately given a non-Wilderness recommendation, without explanation and in direct conflict with earlier recommendations.

Ultimately, the Tumacacori roadless area was not included in the 1984 Arizona Wilderness Act, despite the fact that throughout the 1979 RARE II process, 399 letters were received by the Coronado National Forest supporting Wilderness designation in unit 03-114. In contrast, only 31 letters were received that did not recommend Wilderness designation (only 20% of which were site specific).

The RARE II process of the late 1970's was intended to first identify then analyze the roadless characteristics of Forest lands. The 1983 revision process in preparation for the 1984

Comment No. 9 (continued)

According to USFS's Murphy Peak Quadrangle map, Apache Pass is approximately 1.25 mi (2.01 km) west of the planned Western Corridor route. Apache Pass is not within an IRA, as specified in Volume 2 of the *Final Environmental Impact Statement for the Roadless Area Conservation Rule*. The Western Corridor does not pass through any IRA.

Regarding the citizen-initiated proposal for an addition to the National Wilderness Preservation System, the Federal agencies are aware that environmental groups are interested in achieving Federal wilderness designation for a large portion of the Tumacacori EMA. Maps provided by commentators indicate that all corridor alternatives considered in this EIS cross the area suggested for wilderness designation. Presence of a transmission line would not necessarily preclude wilderness designation, as Forest Service regulations (36 CFR 293.15) provide for the establishment and subsequent maintenance of transmission lines in wilderness areas. Information about the wilderness proposal has been added to Section 5.2.4 of the FEIS as a potential future action.

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Arizona Wilderness Act was similar in intent and changed little. Throughout this process, the area was field checked, ranked, and analyzed for Wilderness potential. It is important to note that this identification process was clearly spelled out by the RARE II Draft EIS and included a variety of different means of analyzing a particular area. It is also important to note that Congress in the National Forest Management Act directed the Forest Service to again consider roadless areas during the forest plan revision process.

In May 2000 the Forest Service proposed a dramatic new policy of conservation with its release of the Forest Service Roadless Area Conservation draft environmental impact statement. This national policy making was precipitated by a mandate given on October 13th, 1999 by President Clinton directing the Forest Service to "provide appropriate long-term protection for most or all of these currently inventoried 'roadless' areas, and to determine whether such protection is warranted for any smaller 'roadless areas not yet inventoried'" (emphasis added). At that time, as is true today, the 1983 Revised Roadless Area Boundaries on the Coronado National Forest were the most recent systematic inventories by the Forest Service of roadless areas on the forest.

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In preparation for this rulemaking, the Forest Service Washington Office (WO) released a memo to Regional Offices requesting roadless area information (File Code 1920 Nov. 12, 1999). In this memo, the WO specifically requests "geospatial data displaying National Forest System lands currently inventoried for planning purposes as roadless areas (emphasis added). In enclosure 1 of this same memo, the WO requests:

"geospatial data (GIS coverages or maps) displaying National Forest System lands inventoried (as of October 13, 1999) for planning purposes as roadless areas. This inventory is based on forest plans, forest plan revisions in progress where the Agency has established an inventory (this information should be in Appendix C of most forest plans), or other assessments that are completed and adopted by the Agency. RARE II inventory information should only be used if a forest does not have a more recent roadless area inventory which was established using RARE II information." (emphasis added)

This memo further clearly articulates the fact that each Forest was expected to use already existing roadless area information that has or was in the process of going through analysis outside of the 2000 Roadless Area Conservation rulemaking. The rulemaking was clearly not intended to actually identify roadless areas (see DEIS Forest Service Roadless Area Conservation May 2000). Further, federal regulation clearly outlines the process for the identification of roadless areas, stating:

"During analysis of the management situation, the following areas shall be subject to evaluation: (a) Roadless Areas including those previously inventoried in the second Roadless Area Review and Evaluation (RARE II), in a unit plan, or in a forest plan, which remain essentially roadless and undeveloped, and which have not yet been designated as

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wilderness or for nonwilderness uses by law. In addition, other essentially roadless areas may be subject to evaluation at the discretion of the Forest Supervisor." 36 C.F.R. §219.17

Under these authorities and others, RARE II areas are a starting point to guide identification of roadless areas until the forest plan revision process is initiated, although areas which are arguably roadless (including adjacent roadless areas smaller than 5,000 acres) but not identified during the RARE II process must be assessed on the ground before development occurs. Kettle Range Conservation Group v. U.S. Forest Service, 971 F. Supp. 480 (Dist. Ore. 1997).

Despite this clear direction of the WO and federal law, the Coronado National Forest did not consider RARE II areas or the 1983 Revised Roadless Area Boundaries when they submitted their Inventoried Roadless Area maps to the WO for inclusion in the 2000 Roadless Area Conservation DEIS and 2001 FEIS, instead acting unilaterally and illegally in the following respects:

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§ Failed to use existing roadless information and created their own, never seen before data after October, 1999 – in conflict with direction from the WO as given in the November 12, 1999 Regional Office memo.

§ Failed to identify and analyze their new Inventoried Roadless Area maps under NEPA. The maps as seen in the 2000 DEIS of the Roadless Area Conservation Rule had not gone through a public process, as required by NEPA. The maps had never even been seen outside of the Coronado National Forest before being published in the 2000 Roadless Area Conservation Rule DEIS. The maps effectively created roads where there were no roads before, and in several instances created much smaller roadless areas than had existed previously.

§ Failed to use a process that would accurately assess existing roadless areas. Instead of using existing data (RARE II) or already proven protocol for roadless area identification, the CNF used the Recreational Opportunities Spectrum (ROS), which has never been intended to actually identify roadless areas, and is not the proper manner with which to identify roadless areas as outlined in law, regulation, and the Forest Service Handbook and Forest Service Manual.

§ Failed in accurately identifying roadless areas on the Forest. For instance, in the Tumacacori RARE II area 03-114, Apache Pass and Bartolo Mountain are connected to the larger bulk of the roadless area. While no new roads have been built in this area since 1979 when RARE II identified the roadless boundaries, the 2000 IRA, using the fundamentally flawed ROS program, did not accurately display similar roadless area boundaries. Apache Pass is not shown within the Roadless Area – even though no new roads have been built. Additionally, if roads had been

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constructed in such areas, such construction would clearly have been illegal because no Environmental Impact Statement has been completed.

Additionally, the ROS process illegally identified “buffers” around “roads” that split Roadless Unit # 03-114 into two smaller and distinct roadless areas. The 2000 Inventoried Roadless Maps submitted and displayed in the 2000 Roadless Area Conservation Rule DEIS was simply created drawing 0.5 or 1.0 mile buffers around every Forest Service Road and naming whatever scraps that were left as an IRA. Despite this administrative chicanery, the on the ground reality is that the area is clearly roadless. While almost nothing has changed on the ground, the maps are vastly different. The 1983 RARE II based map includes Apache Pass, the 2001 IRA map does not. Counter intuitively, the 1983 map is more accurate.

Reflecting the current roadless nature of this landscape, Roadless Unit #03-114, adjacent areas, and other acreage is currently the subject of a citizen’s Wilderness proposal. TEP’s proposed powerline would destroy the potential for this proposal—supported by elected representatives, community members, advocacy groups and many others—and would in fact run through the heart of this outstanding area. CBD, the Arizona Wilderness Coalition and Defenders of Wildlife thus urge the DEIS to be amended to reflect the existence of this citizen’s area and to analyze the devastating impact TEP would have on this collaborative effort.

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The 1984 Arizona Wilderness Act clearly prohibits the establishment of “buffers” around roadless areas, stating in Sec. 101 (d) that “The Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters of buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.” Thus, the incursion into existing Wilderness or roadless areas through the use of “development perimeters” is equally unlawful.

This conclusion is supported by the legislative history accompanying previous Wilderness efforts. For example, Senator Church, in the Hearing Record on the Subcommittee on Public Lands on May 5, 1972 addressed this concept regarding the Park Service in the early 1970’s, stating that “Now we see that the National Park Service is again, as a matter of blanket policy, setting the boundaries of its proposed wilderness units back from the edge of roads. . . by “buffer and “threshold” zones of varying widths. There is no requirement for that in the Wilderness Act. No other agency draws wilderness boundaries in this way, which has the effect of excluding the critical edge of wilderness from full statutory protection.”

Time and again, Congressional representatives considering Wilderness laws have stated that buffers around Wilderness Areas, much less Inventoried Roadless Areas should not be utilized or promoted. Despite this fact, the CNF used a minimum of 0.5 mile buffers on each side of every road, even if that road no longer existed, as a means to artificially fragment and decrease the size of previously inventoried roadless units. When asked in 2000 why this was so, the Coronado National Forest responded that they did not want the “sights and sounds” of roads within the

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Inventoried Roadless Areas. As the Forest Service should know, however, the “sights and sounds” argument was soundly rejected by Congress over 25 years ago, when it overrode Forest Service attempts to exclude most potential Eastern Wilderness areas and many Wilderness areas bordering urban areas in the West. This fact is plainly reflected in the language of the Eastern American Wilderness Act, as well as the legislative history of the Eastern American Wilderness Act, the Endangered American Wilderness Act, and oversight hearings on RARE II.

The path of both the preferred Western Route passes directly through an Inventoried Roadless Area that was not properly or legally assessed in the CNF’s recent roadless area mapping project in preparation for the 2001 Roadless Area Conservation Rule, and is thus illegal under that rule. Because of this fact, the Inventoried Roadless Area as shown and described in the Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement is not correct. The correct Inventoried Roadless Area in the Tumacacori EMA clearly should include Apache Pass. The consequences of such changes in the Inventoried Roadless Area map would have dire consequences for the proposed Western Route. The Western Route would no longer avoid the Inventoried Roadless Area, but actually cross it. Under the Roadless Rule, the building of permanent roads in Inventoried Roadless Areas is not allowed.

VI. THE ANALYSIS OF POTENTIAL IMPACTS TO WILDLIFE IS INADEQUATE

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The Coronado National Forest in general, and the Tumacacori ecosystem management area in particular, contain an incredibly array of wildlife and plant diversity. The Coronado is renowned for its high level of endemic species, its diversity of habitats, and the uniqueness of its assemblages of flora and fauna. Areas both within and adjacent to the proposed powerline corridor are home to many of these species, and will clearly be adversely and irreversibly affected by this incredible and unwarranted incursion upon a largely unspoiled landscape. With so few areas like the Tumacacori ecosystem left, it is difficult to overstate the impact the powerline and its ancillary developments will have, especially on the region’s wildlife.

Unfortunately, TEP has consistently attempted to minimize and trivialize these potential impacts. The information presented in the DEIS reflects this attitude, and the analysis of such impacts is cursory and clearly insufficient. This is especially apparent with respect to the DEIS’s analysis of impacts on special status species, including threatened, endangered, and Forest Service management indicator species.

For example, with respect to jaguar, the DEIS and Biological Assessment conclude without meaningful analysis that the construction of this powerline—along with the road construction, fragmentation of habitat, and other cumulative impacts such as increased human presence for maintenance and other needs—is “not likely to adversely affect” this species (as defined under the Endangered Species Act). In doing so, the DEIS notes that the primary prey of jaguars is deer, whose population it is claimed will not be affected by the powerline.

Comment No. 10

Sections 3.3 and 4.3 describe the existing biological resources and potential impacts to these resources, including impacts to jaguar and Mexican spotted owl (Section 4.3.3). Section 3.3.5, Coronado National Forest Management Indicator Species (MIS), has been revised to include additional information regarding MIS and their habitat in the Coronado National Forest. The MIS environmental impact section (Section 4.3.5) has also been revised to provide additional information. Additionally, a recent USFS MIS Report has been prepared. This report is listed in the references as USFS 2004d (Chapter 11 of the EIS) and is available upon request to the USFS.

Sections 3.3.2 and 4.3.2 of the Final EIS have been revised to include discussion and analysis of habitat fragmentation. The Biological Assessments (Appendices D, E, F, and K, provided on CD-rom attached to this document) serve as the basis for analysis of potential threatened and endangered species impacts in the EIS and provide more information on potential effects to each species, such as jaguar and the Mexican spotted owl. A Biological Opinion was issued for the Western Corridor by the U.S. Fish and Wildlife Service on April 24, 2004 (also provided on CD-rom attached to this document).

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Unaddressed is the fact that the last known U.S. sighting of this species occurred two years ago in an area very near the powerline corridor, that all recent sightings of the jaguar in the U.S. have been in remote and undeveloped areas, and that any incursions into its occupied and potential habitat—let alone the construction of a massive powerline—has a high potential to drive the species from the area. The Tumacacori Highlands are one of the most important jaguar areas in the entire U.S., and this proposal will inalterably and profoundly affect both the character and integrity of the area. The DEIS's consideration and honest assessment of this fact is simply absent.

Similarly, the DEIS's conclusion that the proposed powerline is not likely to adversely affect the Mexican spotted owl is unsupported. The Coronado National Forest is an extremely important area for the survival and recovery of this threatened species, and one of its primary habitats within the Coronado—riparian gallery forests of willow and cottonwood—is acknowledged as among the rarest in the continental U.S. Despite the fact that both the Western and Central corridors would destroy this habitat type in areas immediately adjacent to known occupied habitats and designated territories for the spotted owl, TEP's wildlife consultants have apparently concluded that the species won't be adversely affected because the territories themselves are not fragmented. This conclusion ignores both the ecological need and legal imperative under the ESA not only for the spotted owl's current habitat to be protected, but also suitable nesting habitat that may be occupied in the future and that is needed for eventual recovery of the species.

Additionally, the DEIS clearly fails to meet NFMA's mandate with respect to the analysis of Management Indicator Species (MIS). In fact, the "affected environment" section of the DEIS contains absolutely no discussion or analysis of MIS, a clear violation of NEPA.

Under NFMA and its implementing regulations, the Forest Service has clear statutory and regulatory obligations with respect to MIS. Pursuant to NFMA, the Forest Service is required to "provide for a diversity of plant and animal communities." 16 U.S.C. § 1604(g)(3)(B). Regulations implementing this provision state more specifically that the Forest Service must manage habitat to "maintain viable populations of existing native and desired non-native vertebrate species." 36 C.F.R. § 219.19. The regulations further state that to implement this requirement, certain species must be designated as "management indicators," and that "planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species." Finally, "population trends of the management indicator species will be monitored and relationships to habitat changes determined." § 219.19 (a)(1) and (6)(emphasis added). Thus, the courts have held that in order for the Forest Service to fulfill its duties with respect to MIS, "population data must be collected." *Sierra Club v. Martin*, 168 F.3d 1, 7 (11th Cir. 1999). This holding has recently been followed within the 10th Circuit, District of New Mexico. *Forest Guardians v. United States Forest Service* (CV 00-714)(March 12, 2001)(Decision by District Chief Judge Parker).

In *Sierra Club v. Martin*, the court remanded timber sales on the Chattahoochee and Oconee National forests, holding that MIS requirements applied to projects level decisions, and required quantified population data:

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"[D]espite this extensive habitat change and the fact that some MIS populations in the Forest are actually declining, the Forest Service has no population data for half of the MIS in the Forest and thus cannot reliably gauge the impact of the timber projects on these species."

The Coronado forest plan identifies a number of MIS which occur or have suitable habitat within the powerline corridor and its broader affected area, including: black bear, Mexican spotted owl, elegant trogon, white-tailed deer, Merriam's turkey, Montezuma quail and many other species. In contravention of NFMA's implementing regulations, judicial interpretations of the MIS requirement, and the Coronado's own forest plan, the FEIS and the record fail to provide the requisite quantified population data, and thus also fail to provide reliable estimates of population trend.

As clearly stated by NFMA and its implementing regulations, and as recently affirmed by both the Sierra Club and Forest Guardians cases, the Forest Service's duties to monitor the population numbers and trend of MIS is a project-specific as well as a programmatic requirement. The DEIS's conspicuous failure to address these requirements with respect to any MIS, or even to provide any analysis of MIS, clearly fails to meet these important requirements.

VII. THE IMPACT ON SYCAMORE CANYON, A POTENTIAL WILD AND SCENIC RIVER, IS NOT ADEQUATELY ADDRESSED

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The Wild and Scenic Rivers Act was enacted to protect America's remaining free-flowing rivers from dam proposals and other harmful projects. Since its passage in 1968, over 10,500 miles of river nationwide on over 150 river segments have been designated under the Act. However, very few rivers have been designated in the Southwest, Rocky Mountains, and other regions, and many designated Wild and Scenic rivers are not receiving adequate protection. More than 30 years after the Act's passage, only one river segment in Arizona has been provided protection under the Act. While ultimate responsibility for protection under the Wild and Scenic Rivers Act resides with Congress, a fundamental reason more rivers have not been designated in Arizona and across the Southwest is that federal agencies have not met their duties to analyze, inventory and lobby for protections of eligible river segments under their jurisdiction.

In 2001, the Center for Biological Diversity sued the Forest Service for failing to develop management plans for 57 Arizona rivers and streams identified in 1993 as eligible for protection under the Wild and Scenic Rivers Act. Since ultimate designation under the Act requires Congressional action and can take years or even decades to accomplish, management plans provide critical interim protection from destructive dam proposals, powerline construction, livestock grazing, and logging. This protection is now eight years overdue on Arizona's six National Forests. Recently, CBD prevailed in this case, and the Forest Service must now provide protections to these rivers—including Sycamore Canyon on the Coronado National Forest.

Comment No. 11

Figure 3.1-1, Specially Designated Areas on the Coronado National Forest, has been revised in the Final EIS to show the portion of Sycamore Creek that is preliminarily eligible for designation as a Wild and Scenic River (the segment of Sycamore Canyon from south of Ruby Road to the U.S.-Mexico border). Based on a site visit by USFS resource specialists and others, the Western Corridor is not visible from the eligible area. The topography of Sycamore Canyon is characterized by a very deep canyon, thus reducing the likelihood that a viewer standing at the creek bottom would be able to see a transmission line located outside the canyon. Thus, if Sycamore Canyon were determined to be a Wild and Scenic River, the transmission line would not be visible from the wild and scenic reach of the river.

Refer to Section 4.7, Water Resources, for a discussion of erosion and sedimentation.

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As noted in the EIS, the Western Corridor would cross directly over and through Sycamore Canyon. Although the route as outlined in the DEIS would cross somewhat north of the eligible wild and scenic river segment, the exact routing has not been determined, and the line could potentially occur immediately adjacent to the wild and scenic boundary.

Due to the size of the line, people in the upper portions of the canyon south of Ruby Road could potentially see the line in some areas, yet this impact was not considered in the DEIS. Also unconsidered is the potential affect on hydrology and possible effects of erosion and sedimentation on Sycamore Creek and its larger watershed.

VIII. THE CUMULATIVE EFFECTS ANALYSIS IS INSUFFICIENT

The need to adequately address cumulative effects is a cornerstone of lawful NEPA compliance. 40 C.F.R. § 1502.16. Under CEQ's NEPA implementing regulations, cumulative effects are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. The requirement to address cumulative effects has been addressed in detail recently by several federal court decisions. As stated recently by the 9th Circuit Court of Appeals,

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"To 'consider' cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look that it is required to provide . . . General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not provided."

Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1379-80 (9th Cir. 1998)

The court's holding the Neighbors of Cuddy Mountain case has been followed by several subsequent decisions within courts around the country, including courts within the 4th, 9th, and D.C. Circuits. As noted repeatedly in these cases, the analysis of cumulative effects must be contained within the NEPA document:

"The EA's cursory and inconsistent treatment of sedimentation issues, alone, raises substantial questions about the project's effects on the environment and the unknown risks to the area's renowned fish populations. We do not find adequate support for the Forest Service's decision in its argument that the 3,000 page administrative record contains supporting data. The EA contains virtually no references to any material in support of or in opposition to its conclusions. That is where the Forest Service's defense of its position must be found."

Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1213-14 (emphasis added).

Comment No. 12

Chapter 5 of the EIS presents an analysis of cumulative impacts, as required under NEPA, that could occur as a result of the potential impacts of TEP's proposed project when added to impacts from other past, present, and reasonably foreseeable future actions. Where specific information was available on past, present, and reasonably foreseeable future actions, it was included in the EIS; relevant information received from the public during the Draft EIS public comment period was also added to the Final EIS (e.g., information on planned residential developments was added to Section 5.2.4).

The Federal agencies have revised sections 5.2 and 5.3 of the Final EIS based on the U.S. Border Patrol's response (USBP 2004, see Appendix A) to the Federal agencies' request regarding illegal immigration and law enforcement activities in the proposed project vicinity. The U.S. Border Patrol's response generally re-enforced the information on which the relevant analysis in the Draft EIS was based and provided additional information on increased patrols and a Remote Video Surveillance System planned in the area.

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Like the decisions at issue in the Neighbors of Cuddy Mountain, Blue Mountains, and other cases, the Department of Energy and cooperating agencies have failed to provide detailed and quantified information with respect to cumulative effects as required by NEPA. This failure is especially problematic with respect to: 1) the cumulative effects of proposed road construction and "reconstruction" in conjunction with past, present and future road construction, especially wildcat roads caused by increasing off-road vehicle use; 2) the cumulative effects of the proposed powerline construction and other land use activities within the Tumacacori EMA, such as greatly increased Border Patrol presence, residential and business development outside federal lands, and other activities on sensitive wildlife species such as the Mexican spotted owl and jaguar; and 3) the cumulative effect of the proposed powerline construction, other road construction, grazing impacts and other impacts on soils which may cause increased erosion, sedimentation, and general watershed level impacts on the Sycamore Creek watershed and Pajarita Wilderness area.

While the EIS does contain a cumulative effects section which addresses some of these issues, the analysis provided in narrative and qualitative in nature, rather than the quantitative and searching inquiry required under NEPA.

IX. CONCLUSION

The Center for Biological Diversity, Defenders of Wildlife and Arizona Wilderness Coalition believe the draft Environmental Impact Statement for Tucson Electric Power's Sahuarita-Nogales transmission line is fatally flawed, and that the issue of opening import-export energy markets between the United States and Mexico must undergo a full, public and programmatic analysis under NEPA before this proposal is considered further. In the interim, a new draft EIS should be completed which addresses the needs of Santa Cruz County and the city of Nogales with respect to reliable energy service, and all of the possible alternative means with which to achieve this goal. We will continue to strongly oppose this effort and all future efforts to site the powerline through the Western or Crossover Corridors, and all other proposals that will irreversibly and dramatically affect the irreplaceable Tumacacori Highlands.

Sincerely,



Brian Segee
Southwest Public Lands Director
Center for Biological Diversity

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Clean Energy Corporation
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TEP Transmission Line

From: Clean Energy Corporation [SMTP:vajra@vecat-inc.com]
To: Pell, Jerry
Cc:

Subject: TEP Transmission Line
Sent: 10/13/2003 5:00 PM
Importance: Normal

Dear Mr. Pell,

The Clean Energy Corporation and its partner Sandia National Labs has developed a program for Energy Surety in communities. In discussions with

advocates for the Nogales area, this program has captured interest as one of the solutions for the power reliability and cost issues for the community.

We would like this program to be considered as an option to resolving some

of the difficulties with the current transmission line plans. We have attached a summary of the program and issue for your consideration.

Regards,
Valerie Rauluk (520) 326-3195
briefing DC 03.doc ESM sum for DC 9-03.doc

Comment No. 1

The Energy Surety in Communities Program may still be independently considered by local communities. However, the program serves a different purpose than that stated in this EIS and, thus, is not evaluated as an alternative in this document. Furthermore, alternative generation services (including distributed energy resources) do not eliminate the need for the proposed project. Section 2.1.5 of the Final EIS has been revised to include a discussion of why local power generating facilities were eliminated from detailed study in this EIS.

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Energy Surety and Community Resiliency

Energy is key to the security and economic health of our communities. Current trends and conditions – the restructuring of the power industry, diminishing national resources, ageing infrastructure, and expanding communities make charting an effective course for policy and program challenging. But there are opportunities as technological and strategic alternatives become progressively more viable.

The Clean Energy Corporation believes that distributed energy resources (“DER”) offer both an effective strategic alternative and a platform for a multiple technologies to mature in the marketplace. The result could be an increase in the quality of our lives, and a surge of economic development with both local and national consequences.

But how to start? How do we reduce the barriers to widespread use of DER, educate the end-user market, and secure the financial resources to deploy real applications? We believe that the Energy Surety Program has the potential to make significant head-way on these issues. By focusing the efforts on a clearly articulated concern, and organizing that need into a critical mass of project opportunities, the political will and need is created to reduce the barriers.

The Need: Energy Surety

Energy Surety, the assurance that power will be available when and where you need it, has always been a concern. The late 1990s awoke many cities to potential infrastructure vulnerabilities related to the Y2K computer problem. The energy infrastructure was clearly among the most vulnerable both because of heavy dependence on automation and because nearly all other core infrastructures rely on it. As a result, nearly all cities, large and small, have conducted vulnerability assessments and written contingency plans to deal with loss of energy sources.

Because of effective advance preparation, Year 2000 passed without incident and concern about infrastructure vulnerability faded. After the attacks on Sept 11, 2001, these concerns gained new urgency and additional concern that even larger threats loom, not from foreign terrorists, but from domestic incidents and natural disasters.

The events of 2003, have highlighted another concern. The vulnerability of aging infrastructure, complex and unevenly integrated systems, and uncertainties in local, regional and inter-regional responsibilities in the midst of the power industries restructuring.

A Solution: Systematic Distributed Energy Resources

Many communities are seeking ways to improve the overall surety and reliability of their energy infrastructure. The traditional, and very costly approach to securing critical energy infrastructure and loads is uninterruptible power supplies (UPS, usually batteries) coupled to diesel generators. Typically, UPS and diesel generators support individual buildings. However, as closer examination reveals previously overlooked critical infrastructure, an ever-greater number of individual backup generators are required. This is an expensive practice because backup generators run only sporadically, but must be continuously maintained. And although these generators are generally reliable, it is not unusual to have some percentage of these fail upon startup or come off line shortly after startup.

Engineers based at Sandia National Labs have pioneered the use of Energy Surety Methodology (ESM), developed for military applications to address civilian needs. Selecting the right mix of technologies for any given community takes care because the electrical generation is dispersed, many of the technologies have varying operational characteristics, and each community's needs are unique. But it can be done, and done cost-effectively. Beginning with a suite of technologies powering critical loads within a specified zone, the Sandia methodology refines and optimizes the technology choices and the linkages between them. The Clean Energy Corporation has partnered with Sandia to bring this planning and implementation approach to the City of Tucson.

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Energy Surety—Building Community Energy Resiliency

Centralized energy infrastructure makes communities vulnerable. Complexity and still evolving power industry restructuring has triggered power failures domestically and internationally. In addition, centralized systems increase vulnerability to attack from Mother Nature, as well as domestic and foreign terrorists. Distributed generation can help protect communities from these disruptions.

“distributed generation at many locations around the grid increases power reliability...”

David Garman, Assistant Secretary of Energy Speech to UPEX 2001.

“deliberate disruptions of [electric] supply can be made local, brief and unlikely if electric systems...are efficient, diverse, dispersed and renewable.”

Amory Lovins, A, et. al., Brittle Power, Brick House, Andover MA, 1982

How to Start? Recently, several US military bases have adopted an Energy Surety Methodology (“EMS”) developed by Sandia National Labs to secure their power surety. The EMS coordinates a suite of technologies to assure uninterrupted power to critical needs and users. The approach is currently being adapted by the Clean Energy Corporation, in conjunction with Sandia, to civilian communities. Tucson, Arizona is currently one of the pilot communities.

The project begins with a comprehensive Energy Surety Plan. Built on the foundation of pre-existing emergency management and Y2K plans, the plan, by organizing a critical mass of energy projects, can be implemented under an energy savings performance contract (ESPC). A high degree of energy assurance can thus be achieved without the outlay of public funds.

Benefits:

- Leadership in effective solutions for homeland security
- Reduced risk of economic losses due to power disruption
- Economic Development opportunities
- Increased power reliability
- Improved service response
- Increased financial resources for energy projects

Partners: Sandia National Laboratory and City of Tucson in conjunction with Tucson, AZ based **Clean Energy Corporation** (Program Director, Valerie Rauluk) and other Arizona partners.

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